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AUTHOR Merriam, Elizabeth B.; And Others
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ABSTRACT

Intended to help librarians, library media specialists, administrators, and educators better understand the ramifications of the copyright law, Public Law 94-553, this document asks and answers some of the basic questions concerning compliance with the law. Topics covered include definition of the copyright law; scope of copyright protection; implications for public libraries and school districts; fair use; copyright guidelines and their relationship to the law; minimum requirements to be met to be in compliance with the copyright law; contents of public library or school district copyright policies; National Commission on New Technological Uses of Copyrighted Works (CONTU) guidelines; record maintenance and retention; copyright clearance; effect of copyright law on contractual arrangements for purchase of serials or other materials; and effect of copyright law on video recordings and microcomputer software. Appendices provide guidelines for maintaining records of interlibrary photocopying requests and for classroom copying of books and periodicals in not-for-profit educational institutions; guidelines under fair use for music; CONTU guidelines for interlibrary loans; off-air taping guidelines; do's and don'ts for computer software; suggested district policy on software copyright; the ICCE (International Council for Computers in Education) Policy Statement on Network and Multiple Machine Software; and a selected bibliography on copyright information. (KM)

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Coping With Copyright

Second Edition

Elizabeth B. Merriam
David R. Salazar
Mary Struckmeyer

Revised by:
M. Elaine Anderson
Supervisor, Microcomputers and Instructional Technology

Ralph Whiting
Supervisor, Telecommunications

Leslyn M. Shires
Assistant Superintendent
Department of Public Instruction

Dianne McAfee Hopkins
Director
Bureau for Instructional Media and Technology

Wisconsin Department of Public Instruction
Herbert J. Grover, State Superintendent
125 South Webster Street, Post Office Box 7841
Madison, WI 53707-7841

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COPING WITH COPYRIGHT

This document is designed to help librarians, library media specialists, administrators, and educators begin to understand the ramifications of the copyright law. There has been much written about this law and much more will be written. Since the law has many gray areas, many of your questions will not be answered until a number of cases are decided in court and, perhaps, not even then. In the meantime, interpretations may vary widely. We have attempted to take a moderate approach, realizing that some of you may interpret the law more liberally while others may be more restrictive. Local legal counsel should be sought if serious questions of interpretation arise.

It should be remembered that the educational and library community is responsible for compliance, not enforcement, of the law. We must all become familiar with the law and keep abreast of new developments. Every public library and school district should have a *written* copyright policy statement which may have to be modified as court cases are decided.

We have avoided citing examples because that involves more legal interpretation than we feel qualified to make. We have included guidelines for classroom copying, music copying, interlibrary loans, and off-air recording together to help you decide what to do. Several of the sources cited in the attached bibliography also provide examples. Once again, each librarian and school district will have to decide how to deal with copyright situations on an individual basis. We hope, however, that this discussion of general concepts will help in making rational decisions and in developing your own copyright policies.

Consultant assistance is available from either the Bureau for Library Development (608) 266-7270 or the Bureau for Instructional Media and Technology (608) 266-1965. Mailing address: 125 South Webster, Box 7841, Madison, Wisconsin 53707.

This document was originally prepared by:

Elizabeth B. Merriam
David R. Salazar
Mary E. Struckmeyer
1978

Revised and updated by:

Elaine Anderson
Ralph Whiting
1986

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1. WHAT IS THE COPYRIGHT LAW?

Public Law 94-553, which was signed October 19, 1976 and took effect January 1, 1978, completely revised Title 17 of the U.S. Code. This law, like all previous copyright laws (1790, 1831, 1879, 1909), has its basis in Article 1 Section 8 of the Constitution which gives Congress the power to "promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Copyright protects the manner in which ideas are expressed or described, but not the ideas themselves.

The U.S. copyright law attempts to balance the public's right to use the writings and discoveries of others versus the private right to benefit from one's creative efforts. The 1909 law became outdated, in part, by the new media of expression (film, television, computer, radio, etc.) and new means of duplication (videotape, copy machines, etc.). The new law also brings the United States into conformity, in many areas, with international copyright practice.

2. WHAT IS THE SCOPE OF COPYRIGHT PROTECTION?

Copyright protection subsists in *original* works of authorships *fixed* in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Under this law, it makes no difference what the form, manner, or medium of fixation may be, whether it is in words, numbers, notes, sounds, pictures, or any other graphic or symbolic indicia in any form that can be perceived directly or by machine. It also covers future technological developments.

3. WHAT ARE THE IMPLICATIONS FOR PUBLIC LIBRARIES AND SCHOOL DISTRICTS?

Since the 1976 law is a complete revision of the 1909 law, it has many new provisions and revises old ones pertaining to libraries and school districts. A summary of the law's organization may make it easier to understand. It is important to know, for example, that the exclusive rights of the copyright owner stated in section 106 are limited by the provisions of sections 107-118. A brief guide to *some* of the law's numerical sections follows:

	Sections	
*	102	basic definitions of terms used throughout
	102-104	works protected by copyright
	105	U. S. government works excluded
	106	exclusive rights of copyright owner
*	107	limitations on exclusive rights in copyrighted works: right of fair use
*	108	reproduction by library or archives
	109	effect of transfer of a particular copy
*	110	performances and displays for nonprofit purposes
*	111	secondary transmissions
	112	ephemeral recordings

	114	sound recordings (scope of exclusive rights)
*	117	computers and similar information systems
*	118	noncommercial broadcasting
	301-305	duration of copyright
	401-406	notice of copyright
	501-506	copyright infringement
*	504	innocent infringement by libraries
	507	statute of limitations
	601	manufacturing clause
	602(a)(3)	importation of copies by libraries
	710	Library of Congress reproduction for blind and handicapped
	810	copyright royalty tribunal

*Of special interest to public library and school library media staff.

4. WHAT IS FAIR USE?

The judicial doctrine of fair use has been used for a long time to limit the exclusive right of copyright owners and to justify copying of copyrighted material. In section 107 of the new copyright law, fair use is for the first time given express statutory recognition. This section adopts four basic standards of fair use. All four standards must be considered together in determining whether a use is fair.

(1) The purpose and character of the use, including whether use is for commercial or nonprofit educational purposes. (Copying for commercial gain is against the law; copying for research, scholarship, teaching, commentary, criticism, or news reporting is not if done within limits.)

(2) The nature of the copyrighted work. (Copying a work intended to be consumed by one person, such as a student's workbook, would probably not be a fair use.)

(3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole. (An individual copying more than a small portion of a copyrighted work or the whole work is probably exceeding fair use. Use the guidelines as aids in determining what is deemed acceptable.)

(4) The effect of the use upon the potential market for or value of the copyrighted work. (Substituting a copy for purchase of a work or a subscription is likely to exceed the fair use provision.)

Since fair use is "an equitable rule of reason" no generally applicable definition is possible and each case must be decided on its own merits. Because this doctrine is subject to various interpretations, it is up to the courts to resolve specific issues.

Much, if not all, library photocopying may be justified under section 107: fair use. However, section 108 gives libraries (and archives, etc.) additional rights. Read section 108 carefully.

5. WHAT ARE THE COPYRIGHT GUIDELINES AND WHAT IS THEIR RELATIONSHIP TO THE LAW?

To help educators and librarians interpret sections 107 and 108 of the copyright statute, sets of guidelines were developed by groups including publishers, authors, educators, researchers, and librarians. These are:

(1) Guidelines: Records of Interlibrary Photocopying Requests.

(2) Guidelines for the Proviso of Subsection 108 (g) (2) known as the CONTU (National Commission on New Technological Uses of Copyrighted Works) Guidelines.

(3) Guidelines for Classroom Copying in Not-For-Profit Educational Institutions.

(4) Guidelines for Educational Uses of Music.

(5) Guidelines for Off-Air Recording.

(6) Guidelines for Copying Computer Software.

(See Appendixes for complete guidelines.)

All of these guidelines are just guidelines and, as such, do not have the force of law. Because they have been drawn up by authors, publishers, educators, researchers, and librarians in connection with the law, however, they will be seriously considered in any court case. Since interpretation of many provisions of the law is also open to question, there are many specific issues which may eventually be resolved in the courts. For cases which fall into these "gray areas" of the law and guidelines, librarians should consult the statute primarily and the guidelines secondarily.

For example, the CONTU Guidelines were written to clarify the concept of systematic copying and to further define the term "aggregate quantities" as used in Subsection 108 (g) (2) of the law. The letters CCG (Complies with Copyright Guidelines) should be used in interloan requests to refer to these guidelines. The main idea behind the guidelines is that interlibrary copying should not substitute for something the library should purchase to fill frequent requests. (See question 7 for more specific information about the CONTU Guidelines.)

6. WHAT ARE THE MINIMUM REQUIREMENTS WHICH SHOULD BE MET TO BE IN COMPLIANCE WITH THE COPYRIGHT LAW?

A library or school district which makes or distributes photocopies or borrows materials on interlibrary loan will need to post certain signs, revise request forms, and perhaps maintain some new files. Copyright signs, labels, stamps, and transparencies are available from library supply houses.

The notices which *must* be used by libraries and schools where photocopies are made and/or distributed are as follows:

(1) Section 108(a)(3)

Although no specific wording is required in the law, a notice of copyright *must* appear on all copyrighted items photocopied for distribution to patrons. This may be done by a rubber stamp, pre-printed photocopy paper, a notice affixed to the photocopy machine, labels, or any other device.

Notice: This material may be protected by copyright law (Title 17 U.S. Code).

(This wording is suggested by the American Library Association [ALA].)

(2) Section 108(f)(1) The following notice should be posted on unsupervised reproduction equipment in a library or archives:

Notice: The copyright law of the United States (Title 17 U.S., Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement.

(This wording is suggested by the American Library Association [ALA].)

A library or archives displaying this notice is *not* liable for copyright infringements by users of the equipment.

(3) Section 108(d)(2) and (e)(2): A "Display Warning of Copyright." Within the immediate vicinity of the place where orders for copies or phonorecords are accepted by library staff, the following notice *must* appear:

NOTICE
WARNING CONCERNING
COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of the copyright law.

As required by this Subsection, the "Display Warning of Copyright" is to be displayed at the place where orders for copies or phonorecords are accepted, e.g., interlibrary loan departments, copy centers where library staff accept orders from users, etc. The notice, printed on heavy paper or other durable material in type at least 18 points in size, shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.

(4) Section 108(d) (2) and 108(e) (2): "Order Warning of Copyright." Printed forms supplied by certain libraries and archives and used by patrons for ordering copies or phonorecords must include a warning identical to the one above. The warning should appear either on the front side of the form or immediately adjacent to the space calling for the name or signature of the patron using the form. The notice shall be printed in type size no smaller than used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

In instances (3) and (4), the language is a final regulation from the Copyright Office, Library of Congress, published in *The Federal Register*, November 16, 1977, pp. 59264-59265.

(5) All photocopy requests (referred through interloan) *must* include a representation as to whether the copy request complies with the law *or* guidelines. CCL indicates Compliance with the Copyright *Law*, which acknowledges the new law and the doctrine of fair use, which was tacitly expressed in photocopying requests under the old law.

CCG indicates Compliance with the Copyright *Guidelines* drawn up to clarify section 108(g) (2), commonly known as the CONTU Guidelines (see appendix D).

The codes CCL and CCG appear on the ALA interloan form and are the commonly accepted representations of compliance with copyright (references 2, 21).

7. WHAT COULD YOUR PUBLIC LIBRARY OR SCHOOL DISTRICT COPYRIGHT POLICY CONTAIN?

It is important to have a policy and interpretation so that the staff know what may be done and why. It's important to have it reviewed and approved by your own institution's legal counsel and board.

In your public library policy, you *should* include a statement to abide by the correct copyright law, P.L. 94-553. You may include:

- a statement of how you will keep records (see Appendix A for ALA recommendations)
- a statement regarding the library's compliance with the law or guidelines
- required notices and warnings (see question 6)
- permissions/procedures for the occasions which appear to be beyond fair use when permission for photocopying or facsimile reproduction should be sought (see question 9)
- statement regarding publishers' contractual restrictions included on subscription invoices (see question 10)

It is suggested that a school copyright policy address the following issues. All policies must include a statement that employees are to abide by the current law, P.L. 94-553. Others might include:

- duplication of copyrighted materials without prior written permission from the copyright owner except under the provisions of fair-use is prohibited
- school employees who violate the copyright law are liable for their actions
- school administrators will not direct any staff member to willfully violate the copyright law
- the school district will support any district employee who is subject to legal action if that employee believed the copying was fair-use
- use of district copy equipment to prevent the purchase of copyrighted materials is prohibited
- the district shall provide all staff with inservice training and information relating to the copyright law
- appropriate notices and warning signs will be placed on all copying equipment
- assistance will be provided school personnel in acquiring the rights to duplicate copyrighted materials
- all prerecorded videocassettes brought into a classroom will be for *instructional* purposes and follow the selection practices (policies) of the district
- a statement relating to not copying microcomputer software that is copyright protected
- a statement prohibiting the reading or performing of copyrighted materials on cable television without permission of the copyright owner
- off-air taping rights need to be included in any copyright policy

8. (a) WHAT ARE THE CONTU GUIDELINES RELATING TO 108 (g) (2) (INTERLIBRARY ARRANGEMENTS FOR PHOTOCOPYING)?

The CONTU Guidelines were drafted by the National Commission on New Technological Uses of Copyrighted Works (CONTU), which offered its offices to the House and Senate Conference Committee to bring together the interested parties in order to achieve agreement and to provide guidance in the application of 108 (g) (2). Subsection 108 (g) (2) limits interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements "that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such *aggregate quantities* (emphasis added) as to substitute for a subscription to or purchase of such work" (108 (g) (2). (See Appendix D for complete guidelines.)

8. (b) WHAT ARE THE CONSEQUENCES OF EXCEEDING THE COPYING LIMITATIONS OF THE CONTU GUIDELINES FOR THE PROVISO OF SUBSECTION 108 (g) (2)?

The CONTU Guidelines were written in an attempt to clarify the concept of systematic photocopying "in aggregate quantities...," *but they are guidelines and not law*. It is important to keep in mind the premise that borrowing should not substitute for a needed subscription. If a library has users or a user who *regularly* need access to an item, that item should be purchased for the library, or the loans are actually a subscription substitute.

8. (c) and (d) WHAT RECORD MAINTENANCE AND RETENTION IS NECESSARY? WHAT WILL BE DONE WITH THE RECORDS?

The American Library Association, Reference and Adult Services Division, Interlibrary Loan Committee has written "Guidelines for Interlibrary Loan Department Record Maintenance and Retention." Librarians should remember that both the CONTU and ALA statements are guidelines and not absolute requirements of the law. Librarians have a responsibility to familiarize themselves with the law and guidelines and to decide which actions will be necessary to best meet the needs of their own libraries.

It is important to note that it is the *requesting* agent which maintains records of its own requests, *not the lending* library. For example, a borrowing library could legally request copies from 20 recent issues of a journal title and consult CCG to see if the borrowing library had started a subscription to that title. The lending library would have no way of knowing this. On the other hand, the borrowing library could exceed the CONTU Guidelines with its first request if it had borrowed the title systematically from other libraries first.

See Appendix A for the Guidelines: Records of Interlibrary Photocopying Requests.

9. (a) WHAT IS COPYRIGHT CLEARANCE?

The term "copyright clearance" refers to the process of requesting and receiving permission from the copyright owner to make a copy of a copyrighted work. It may or may not involve the payment of a fee.

9. (b) DO LIBRARIES NEED COPYRIGHT CLEARANCE FOR PHOTOCOPYING?

Most photocopying done by libraries (including school library media centers) in the United States today is legal under the copyright law. Such copying will require neither permission from the copyright holder (owner) nor the payment of license fees or royalties. Under the copyright law libraries have certain rights to make photocopies without any sort of clearance from the copyright owner. It is important that libraries understand and exercise fully these rights.

For example, librarians have the right to make single copies of periodical articles for users. The photocopy is the property of the requester, in this case. Furthermore, photocopies in lieu of interlibrary loans are permitted, including repeated requests for copies from the same title, subject to certain guidelines and statutory limitations (see question 8). Nevertheless, it is conceivable that there will be occasions in which a library will wish to engage in multiple photocopying of a particular title or issue which is of a kind not permitted by the law, and that it will, therefore, wish to obtain copyright clearance for the right to copy. Such clearance could involve permission from the copyright owner to make a specified number of copies for a particular purpose without charge; reprints could be acquired from the author, or permission to use might be contingent upon the payment of a royalty or other fee.

The Wisconsin Educational Media Association has published a handbook for securing copyright permissions. Check the bibliography for the ordering information.

9. (c) HOW DOES COPYRIGHT CLEARANCE RELATE TO FAIR USE AND OTHER PHOTOCOPYING RIGHTS? HOW DO YOU KNOW WHETHER CLEARANCE IS NEEDED?

Fair use is the privilege of using copyrighted material in a reasonable manner *without* the consent of the copyright owner. The criteria to measure "reasonableness of use" are given in Section 107. It is not "reasonable" if your copying is financially harmful to the copyright owner (making and using copies instead of buying or subscribing to a needed work), nor is it "reasonable" to copy an entire work which is "reasonably" available for purchase. Section 108 is more specific in the rights it grants libraries and archives. These rights include the library's right to make a replacement copy for its own collections and the right to make a copy for a user under certain circumstances. It should be noted that the Section 108 rights apply only to libraries that are open to the public or accessible to outside researchers.

Libraries and educational institutions have both "fair use" rights under Section 107 and the specific rights enumerated in Section 108. Section 110 also provides schools with certain rights. Only if the desired copying is outside the bounds of permissible copying in Sections 107, 108, or 110 does copyright clearance become necessary.

To determine whether or not to seek copyright clearance, you should explore whether the copying is a kind authorized under the law or falls within the guidelines that are pertinent to the topic in question. If it is, no clearance of any sort is needed. The law does not provide quantitative standards for how much copying can lawfully be done without clearance, but congressionally accepted guidelines relating to "aggregate quantity" copying and reproduction are helpful. In approaching the law and the guidelines, relentless literalism is no substitute for good judgment and a basic understanding of the law's intent. The private rights of creators should be balanced with the public right to information. The guidelines are minimal and may be exceeded when good judgment indicates more flexibility.

If you find that the desired copying exceeds what is permitted by law or guidelines, at least four courses of action are open for consideration: (1) you may decide that the excess copying can be avoided (perhaps by careful attention to acquisitions); (2) you may request permission from the copyright holder to make a specified number of copies with or without payment of a fee; (3) you may acquire a reprint from the author; and (4) you may obtain permission and pay the fee through a centralized copy service. (The Copyright Directory listed in the bibliography will help you identify sources to acquire permission).

9. (d) WHAT ARE THE COPYRIGHT CLEARANCE CENTERS?

A library whose users require a large number of photocopies may wish to consider a centralized service for copyright payments. Many such services exist, and others may appear in the future. The Copyright Clearance Center incorporated by the Association of American Publishers (AAP) is a nonprofit service corporation. Other programs for supplying photocopies of journal articles include the National Technical Information Service (NTIS), University Microfilms, Inc. (UMI), and the Institute for Scientific Information (ISI).

Libraries and schools that are involved in photocopying practices beyond the limits authorized by the copyright law should investigate carefully whatever ways may exist for securing copyright clearance. Be sure that you are exercising fully the rights granted by the new copyright law before entering into a fee-paying copyright clearance agreement. In the majority of school and library photocopying situations, it is not necessary to request permission or pay any fee to the copyright holder. License to copy certain video programs may be acquired from the Television Licensing Center. (See Bibliography for address.)

10. HOW WILL THE COPYRIGHT LAW AFFECT CONTRACTUAL ARRANGEMENTS FOR PURCHASE OF SERIALS OR OTHER MATERIALS?

Section 108(f) (4) states that the rights of reproduction granted libraries by section 108 do not override the fair use provisions of section 107 or any contractual obligations assumed by the library at the time it obtained a work for its collection. Some publishers or other copyright owners may attach restrictive contracts to invoices. To avoid such limitations, librarians should draw up a policy statement declaring that they concur with the terms of *Section 107, Limitation on Exclusive Rights: Fair Use*, and that any further restriction imposed upon the subscriber by the publisher will not be honored.

The above statement should be circulated to all vendors and should accompany payments sent for journals and serials. Processors of renewal notices should also be instructed to be aware of restrictive statements which may appear in individual notices.

The statement that "no part of this publication may be reproduced by any means...etc." which appears on some printed materials is *not* generally considered a contractual obligation, since it is a unilateral statement rather than an agreement between parties. Such a statement does *not supersede or abridge the user's fair use rights under Section 107 of the law.*

11. WHAT EFFECT DOES THE COPYRIGHT LAW HAVE ON LOCAL ARCHIVES?

There are three sections of the law to consider in answering this question: Section 108(b) allows libraries and archives to duplicate a facsimile of an unpublished work for purposes of preservation and security or deposit for research use in another library or archives as described in 108 (a) (2), unless such copying violates any contractual obligation assumed at the time a work is obtained. Section 202 makes the distinction between physical ownership and ownership of literary rights.

The law points out that a library or archives should be sure to have a written understanding from the copyright owner about limitations, if any, when receiving letters, manuscripts, etc. Just because a library has material in its collection does not automatically mean that the library or archives has the right to reproduction. Under some circumstances, when no agreement was made at the time of acquisition, heirs of the copyright owners may be able to demand return of the materials. It is recommended that local legal counsel be considered as such cases arise. Public Law 96-517, Section 7 (b) amended Section 117 of Public Law 94-553 and allows for the making of an archival copy of a computer program.

12. WHO IS LIABLE? UNDER WHAT CIRCUMSTANCES?

Section 501 covers infringement of copyright. This section states: (a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118, or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright.

- For *unsupervised photocopying equipment* the user is liable.

  Section 108(f). Nothing in this section--(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided*, that such equipment displays a notice that the making of a copy may be subject to the copyright law;

- For *interlibrary loan copying* the recordkeeping and liability lies with the requesting library. The lending library is not required to keep records.

- For copying done by staff for a user the person actually performing the copying may be liable if multiple copies are made. Caution should be used in duplication and copy centers to insure that copyright protection is maintained. A copyright policy relating to written permission provided prior to any multiple duplication of print or audiovisual materials will serve to alert all users to the need to secure copyright clearance or permission.

Section 504 (c) (2) specifically deals with the special situation of libraries and archives and not-for-profit institutions. If the employee or agent of such an institution infringes copyrighted material but believes, and has reasonable grounds for believing, that what they were doing constitutes fair use (under section 107), the court shall remit statutory damages.

13. HOW DOES THE COPYRIGHT LAW AFFECT VIDEORECORDINGS?

Appendix E contains the off-air taping guidelines for educational institutions, including libraries. Please review them carefully.

a. Can videorecordings marked "For Home Use Only" be used for educational purposes in a classroom or school library media center without obtaining permission from the copyright holder?

Section 110(1) appears to allow the use of *legally acquired* videorecordings (through purchase or rental) in classrooms or similar places of instruction as part of face-to-face teaching. The use must be directly related to the instructional program and *not used for recreation or entertainment.*

Section 110: Notwithstanding the provisions of Section 106, the following are not infringements of copyright:

> **(1) performance or display of a work by instructors or pupils in the course of face to face teaching activities of a nonprofit educational institution in a classroom or similar place devoted to instruction, unless in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made.**

With respect to where a motion picture or videorecording may be shown, the term "classroom or similar place" is defined on page 82 of House Hearing Report 94-1476 to mean a place which is devoted to instruction and would include a studio, a workshop, a gymnasium, a training field, a library, the stage of an auditorium, or the auditorium itself, if actually used as a classroom for systematic instructional activities.

It should also be noted that any duplication or copying of a videorecording is illegal. This would apply even to the making of an archival copy or transferring from one format to another.

This statement has been approved by the Motion Picture Association of America. If you wish to clarify or confirm your Section 110(1) rights, please contact Mr. James Bouras, Vice President, Secretary & Deputy General Attorney, Motion Picture Association of America, Inc., 522 Fifth Avenue, New York, NY 10036, (212) 840-6161.

It is very important that there be a *district policy* that provides for the use of the materials selection process of all videorecordings that are used in the classroom. This will reduce the potential for problems with inappropriate or non-instructional recordings being used.

b. May I show videotape programs over the cable TV channel to schools?

Not unless you have the audiovisual rights to do so. You must obtain them from the copyright holder at the time you are acquiring the program.

c. May I tape a school play or musical and show it over the cable TV channel?

This use could constitute a performance beyond the rights you acquired by purchasing the play or sheet music. Always check with your vendor and read the purchase contract. An original play or musical may be shown if the copyright owner (teacher, school, etc.) allows.

d. May a public library show home-use-only videorecordings in the library?

No. This is a public performance not covered by Section 110 (1) and would *not* be allowed. Patrons may check out a videorecording for personal use.

e. May a public library loan home-use-only videorecordings?

Yes, under the first sale doctrine, videorecordings may be loaned to patrons for their personal use, not for public performances.

14. HOW DOES THE COPYRIGHT LAW AFFECT MICROCOMPUTER SOFTWARE?

See page 33, Appendix F.

a. May I copy a microcomputer software program?

Public Law 96-517, which Congress passed in December 1980, amends a common copyright law to grant the owner of a particular computer program the right to copy if, and only if, (1) such a copy is "an essential step in the utilization of the program in conjunction with a machine," or (2) the copy is for archival purposes only, i.e., to serve as a back-up in case the original is lost or destroyed.

Some copying, then, is perfectly legal; the law as it now stands adequately responds to the need for back-up copies to protect the original investment in software. A school may not purchase one copyrighted computer program and reproduce it in quantity for use with several computer systems without the express permission of the copyright owner. This practice is a violation of federal law.

b. May I use one program to boot multiple computers?

You will generally need a license to multiple load one disk into many machines. Read your purchase contract carefully. Without a license that permits the booting of one disk into multiple machines in sequence, you are probably in violation of the copyright law. The law is designed to protect the copyright holder from loss of sales, and by booting the same disk into 10 computers one after another, you may be inhibiting sales. Fortunately, more and more computer software producers are offering special lab packs of software at greatly reduced prices, or a licensing agreement for use of software on more than one computer at a time, so that schools can look at legal, but affordable, methods of operating multiple computers with the same software package.

c. May I network one program to multiple stations?

No, not without a "network license." If you are going to use microcomputer programs in this manner, obtain a license from the copyright holder. You are probably in violation of the copyright law if you download a program to a number of computers through a networking system, unless you have a network license for that software. Again, more and more instructional software producers are offering this type of license. (MECC, Minnesota Educational Computing Consortium, is a case in point.)

APPENDIX A
Guidelines: Records of Interlibrary Photocopying Requests

After revising the Interlibrary Loan form to provide space for copyright representation (AL, Oct., pp. 492B-C), the Interlibrary Loan Committee of ALA's Reference and Adult Services Division prepared the following Records Maintenance and Retention Guidelines for interlibrary loan departments.

This statement deals only with recommended Record Maintenance and Retention Guidelines. Interlibrary Loan librarians have a responsibility to familiarize themselves thoroughly with the provisions of the Copyright Revision Act of 1976 (PL 94-553), particularly Sections 107 and 108, and the provisions of the guidelines drafted by the National Commission on New Technological Uses of Copyrighted Works (CONTU). Guideline #4 states:

> "The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made."

Most libraries already keep some kind of record of all interlibrary loan requests. That record should continue. However, it must be supplemented by the kind of record described below *for certain kinds of requests*. (See Subsection 108(d) of the law and CONTU Guideline #1.)

1. Form of record

It is recommended that records for periodicals be kept by title. Two possibilities seem workable: 1) a copy of the ALA Request for Loan or Photocopy form, a copy of the teletype request, or other record could be kept; or 2) a card could be set up for each title requested containing essential information including whatever is necessary to link this card to the library's file of request forms.

Note: A library may choose one of these methods or develop its own. Whatever is done, it is essential that the library keep a file of requests for these materials, that the file be accessible by title, and that the date of the request be noted.

2. Creation of Record

a. For periodical material: Beginning on January 1, 1978, when a request is made for a copy of an article or articles published in a copyrighted periodical *within five years prior to the date of the request*, the library will either: a) set up a card for the title of that periodical or b) enter a copy of the request form in a file of forms arranged by title. If a card is set up it should include the date of the request and either the name of the requester or the requester's order number so that reference may be made to the complete form if necessary. All later requests for the same periodical title will be recorded in like manner.

b. For material in any other copyrighted work: Beginning on January 1, 1978, when a request is made for a contribution to a collection or for a small part of any copyrighted work, the library will follow procedures based on those described above. The record may be kept by title or main entry.

3. Use of Record

a. Making requests: Before requesting a photocopy, the record will be checked. If a library is using the card system and no card exists, one will be created. If a card does exist, and the number of previous requests filled complies with the CONTU Guidelines, the date and name of requester will be entered. If a library is using the copy system and the number of previous requests complies with the CONTU Guidelines, the request will be made and a copy filed.

b. Receiving material: When a request is filled, this will be noted on the card or copy. If a request is not filled, a line will be drawn through the entry on the card or the copy will be marked "not filled."

4. Contingencies

When a request is made for loan of material rather than a copy, but the supplying library sends a photocopy, a record will be made either by marking on a card or by filing a copy of the form, at the time the material is *received*.

5. Retention of Records

a. Items in this file of cards or copies of forms must be kept until the end of the third complete calendar year after the end of the calendar year in which a request shall have been made. Thus, for a request made on any date in 1978, the record must be retained until December 31, 1981.

b. If a library uses the card method, copies of the form on which an interlibrary loan has been requested must also be kept, in whatever order the library wishes, until the end of the third complete calendar year after the end of the calendar year in which a request is made.

c. Information contained in the records should be summarized before records are destroyed. The summary may be useful for the five-year review mandated by Subsection 108(i) of the copyright law as well as for internal management purposes. Suggestions for the form of the five-year review summary will be made at a later time.

American Library Association, Reference and Adult Services Division, Interlibrary Loan Committee, September 1977.

APPENDIX B
Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purpooses may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

GUIDELINES

I. SINGLE COPYING FOR TEACHERS

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

A. a chapter from a book

B. an article from a periodical or newspaper

C. a short story, short essay, or short poem whether or not from a collective work

D. a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper

II. MULTIPLE COPIES FOR CLASSROOM USE

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion, *provided that*

A. the copying meets the tests of brevity and spontaneity as defined below, and

B. meets the cumulative effect test as defined below, and

C. each copy includes a notice of copyright.

DEFINITIONS:

Brevity:

i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages, or (b) from a longer poem, an excerpt of not more than 250 words.

ii. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

(Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

iii. Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.

iv. "Special" works: Certain works in poetry, prose, or "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding, such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof may be reproduced.

Spontaneity:

i. The copying is at the instance and inspiration of the individual teacher, and

ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect:

i. The copying of the material is for only one course in the school in which the copies are made.

ii. Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

iii. There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

III. PROHIBITIONS AS TO I AND II ABOVE:

Notwithstanding any of the above, the following shall be prohibited.

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.

B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests, test booklets, answer sheets, and like consumable material.

C. Copying shall not

a. substitute for the purchase of books, publisher's reprints or periodicals.

b. be directed by higher authority.

c. be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying.

In addition, representatives of the Music Publishers' Association of the United States, Inc., the National Music Publishers' Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music and the Ad Hoc Committee on Copyright Revision developed the following guidelines. (See Appendix C.)

APPENDIX C
Guidelines Under Fair Use for Music

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

A. PERMISSIBLE USES

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
2. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than (10%) of the whole work. The number of copies shall not exceed one copy per pupil.
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings or performance by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. PROHIBITIONS

1. Copying to create or replace or substitute for anthologies, compilations, or collective works.
2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A(1) above.
4. Copying for the purpose of substituting for type purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

APPENDIX D
CONTU Guidelines for Interlibrary Loans

Photocopying--Interlibrary Arrangements

Introduction

Subsection 108 (g) (2) of the bill deals, among other things, with the limits on interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements "that do not have as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work."

The National Commission on New Technological Uses of Copyrighted Works offered its good offices to the House and Senate subcommittees in bringing the interested parties together to see if agreement could be reached on what a realistic definition would be of "such aggregate quantities." The Commission consulted with the parties and suggested the interpretation which follows, on which there has been substantial agreement by the principal library, publisher, and author organizations. The Commission considers the guidelines which follow to be a workble and fair interpretation of the intent of the proviso portion of subsection 108 (g) (2).

These guidelines are intended to provide guidance in the application of section 108 to the most frequently encountered interlibrary case: a library's obtaining from another library, in lieu of inter-library loan, copies of articles from relatively recent issues of periodicals--those published within five years prior to the date of the request. The guidelines do not specify what aggregate quantity of copies of an article or articles published in a periodical, the issue date of which is more than five years prior to the date when the requet for the copy thereof is made, constitutes a substitute for a subscription to such periodical. The meaning of the proviso to subsection 108 (g) (2) in such case is left to future interpretation.

The point has been made that the present practice on interlibrary loans and use of photocopies in lieu of loans may be supplemented or even largely replaced by a system in which one or more agencies or institutions, public or private, exist for the specific purpose of providing a central source for photocopies. Of course, these guidelines would not apply to such a situation.

GUIDELINES FOR THE PROVISO OF SUBSECTION 108 (g) (2)

1. As used in the proviso of subsection 108 (g) (2), the words "...such aggregate quantities as to substitute for a subscription to or purchase of such work" shall mean:

   (a) with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a "requesting entity") within any calendar year for a total of six or more copies of an article or articles published in such periodical within five years prior to the date of the request. These guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request is made. These guidelines do not define the meaning, with respect to such a request, of "...such aggregate quantities as to substitute for a subscription to (such periodical)."

(b) with respect to any other material described in subsection 108(d), (including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.

2. In the event that a requesting entity

(a) shall have in force or shall have entered an order for a subscription to a periodical, or

(b) has within its collection, or shall have entered an order for, a copy or phonorecord of any other copyrighted work, material from either category of which it desires to obtain by copy from another library or archives (the "supplying entity"), because the material to be copied is not reasonably available for use by the requesting entity itself, then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a supplying entity only under those circumstances where the requesting entity would have been able, under the other provisions of section 108, to supply such copy from materials in its own collection.

3. No request for a copy or phonorecord of any material to which these guidelines apply may be fulfilled by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.

4. The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.

5. As part of the review provided for in subsection 108(i), these guidelines shall be reviewed not later than five years from the effective date of this bill.

The conference committee is aware that an issue has arisen as to the meaning of the phrase "audiovisual news program" in section 108(f)(3). The conferees believe that, under the provision as adopted in the conference substitute, a library or archives qualifying under section 108(a) would be free, without regard to the archival activities of the Library of Congress or any other organization, to reproduce, on videotape or any other medium of fixation or reproduction, local, regional, or network newscasts, interviews concerning current news events, and on-the-spot coverage of news events, and to distribute a limited number of reproductions of such a program on a loan basis.

Another point of interpretation involves the meaning of "indirect commercial advantage," as used in section 108(a)(1), in the case of libraries or archival collections within industrial, profit-making, or proprietary institutions. As long as the library or archives meets the criteria in section 108(a) and the other requirements of the section, including the prohibitions against multiple and systematic copying in subsection (g), the conferees consider that the isolated, spontaneous making of single photocopies by a library or archives in a for-profit organization without any commercial motivation, or participation by such a library or archives in interlibrary arrangements, would come within the scope of section 108.

To help implement the new copyright law, ALA has prepared the Librarian's Copyright Kit: What You Must Know Now. A collection of 11 documents in a handy folder for easy storage and quick reference, the packet is available from the ALA Order Department, 50 E. Huron St., Chicago, IL 60611 for $7.00, ISBN 8389-3209-6 (1977). ALA's Order Department offers reduced rates on the complete kits and the individual items when purchased in quantity: 5-50 copies, 10% discount; 51-250 copies, 20% discount; 251 or more, 30% discount. (Items included in the ALA kit are indicated in the following bibliography by an asterisk.)

APPENDIX E
Off-Air Taping Guidelines

In March of 1979, Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and Administration of Justice, appointed a Negotiating Committee consisting of representatives of education organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

1. The guidelines were developed to apply **only to off-air recording** by non-profit educational institutions.

2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a non-profit educational institution **for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording.** Upon conclusion of such retention period, all off-air records **must be erased or destroyed** immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

3. Off-air recordings **may be used once by individual teachers** in the course of relevant teaching activities, and **repeated once** only when instructional reinforcement is necessary, **in classrooms and similar places devoted to instruction** within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the **first ten (10) consecutive school days** in the forty-five (45) day calendar day retention period. "School days" are school session days--not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions--within the forty-five (45) calendar day retention period.

4. Off-air recordings may be **made only at the request of and used by individual teachers**, and may **not be regularly recorded** in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

5. A **limited number of copies may be reproduced** from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only **for teacher evaluation purposes,** i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

7. Off-air recordings **need not be used in their entirety,** but the recorded programs **may not be altered** from their original content. Off-air recordings **may not be physically or electronically combined** or merged to constitute teaching anthologies or compilations.

8. All copies of off-air recordings **must include the copyright notice** on the broadcast program as recorded.

9. Educational institutions are expected to **establish appropriate control procedures** to maintain the integrity of these guidelines.

APPENDIX F
Do's and Don'ts for Computer Software: A Guide For Educators Seeking an Interpretation of Copyright Law*

1. Don't make a copy unless you have the permission of the producer.
2. Be skeptical of those who say, "Go ahead and copy, nobody will ever know." Check with your school's attorney or get the written permission of your supervisor.
3. Don't believe anyone who says that the "Off-Air Guidelines" and the guidelines for books, periodicals, and music apply to microcomputer software. Computer software is very different and no copyright guidelines have been approved by national educator-publisher negotiating committees which created the other guidelines.
4. Do buy enough software to get your job done. Buying enough will relieve the temptation to make unauthorized copies.
5. Don't load one diskette into several machines without authorization from the producer.
6. When licenses are offered by producers, buy the licenses and adhere to the limitations in the licenses. Going beyond the terms of the license is as much a violation of the law as any other unauthorized copying.
7. Don't allow computer clubs to use school facilities unless they agree in writing to adhere to the Copyright Act. By letting them stay, you share the legal liability with the club should they be apprehended.
8. Have strict rules to restrict the use of any "archival copy." While the law allows one archival copy, it may not be used in the classroom. Do keep it in a restricted area out of reach of all users.
9. If you accept a preview or on-approval copy from a producer, distributor or dealer, be responsible for ensuring that no copies are made. The Copyright Law applies to previews just as it applies to software you have already purchased.
10. Don't authorize purchase of equipment specifically designed to break protection codes which are built into most software. Possession of such equipment, since its main use is to make unauthorized copies, may be used in court as evidence against you.
11. Do share with teachers, students and administrative personnel a statement reflecting your personal respect for the Copyright Law. Your leadership will inspire others to maintain ethical practices.

*Excerpted from an International Communications Industries Association pamphlet entitled "Should I Copy Microsoftware."

APPENDIX G
Suggested District Policy on Software Copyright

It is the intent of _____ to adhere to the provisions of copyright laws in the area of microcomputer programs. Though there continues to be controversy regarding interpretation of those copyright laws, the following procedures represent a sincere effort to operate legally. We recognize that computer software piracy is a major problem for the industry and that violations of computer copyright laws contribute to higher costs and greater efforts to prevent copies and/or lessen incentives for the development of good educational software. All of these results are detrimental to the development of effective educational uses of microcomputers. Therefore, in an effort to discourage violation of copyright laws and to prevent such illegal activities:

1. The ethical and practical problems caused by software piracy will be taught in all schools in the District.
2. District employees will be expected to adhere to the provisions of Public Law 96-517, Section 7(b) which amends Section 117 of Title 17 of the United States Code to allow for the making of a back-up copy of computer programs. This states that"...it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:
    a. that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or
    b. that such a new copy and adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful."
3. When software is to be used on a disk sharing system, efforts will be made to secure this software from copying.
4. Illegal copies of copyrighted programs may not be made or used on school equipment.
5. The legal or insurance protection of the District will not be extended to employees who violate copyright laws.
6. _____ of this school district is designated as the only individual who may sign license agreements for software for schools in the district. (Each school using the software also should have a signature on a copy of the software agreement for local control.)
7. The principal of each school site is responsible for establishing practices which will enforce this policy at the school level.

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1787 Agate Street
Eugene, OR 97403
503/686-4414

APPENDIX H
ICCE* Policy Statement on Network and Multiple Machine Software

Just as there has been shared responsibility in the development of this policy, so should there be shared responsibility for resolution of the problems inherent in providing and securing good educational software. Educators have a valid need for quality software and reasonable prices. Hardware developers and/or vendors also must share in the effort to enable educators to make maximum cost-effective use of that equipment. Software authors, developers, and vendors are entitled to a fair return on their investment.

Educators' Responsibilities

Educators need to face the legal and ethical issues involved in copyright laws and publisher license agreements and must accept the responsibility for enforcing adherence to these laws and agreements. Budget constraints do not excuse illegal use of software.

Educators should be prepared to provide software developers or their agents with a district-level approved written policy statement including as a minimum:

1. a clear requirement that copyright laws and publisher license agreements be observed
2. a statement making teachers who use school equipment responsible for taking all reasonable precautions to prevent copying or the use of unauthorized copies on school equipment
3. an explanation of the steps taken to prevent unauthorized copying or the use of unauthorized copies on school equipment
4. a designation of who is authorized to sign software license agreements for the school (or district)
5. a designation at the school site level of who is responsible for enforcing the terms of the district policy and terms of licensing agreements
6. a statement indicating teacher responsibility for educating students about the legal, ethical and practical problems caused by illegal use of software

Hardware Vendors' Responsibilities

Hardware vendors should assist educators in making maximum cost-effective use of the hardware and help in enforcing software copyright laws and license agreements. They should as a minimum:

1. make efforts to see that illegal copies of programs are not being distributed by their employees and agents.
2. work cooperatively with interested software developers to provide an encryption process which avoids inflexibility but discourages theft.

Software Developers'/Vendors' Responsibilities

Software developers and their agents can share responsibility for helping educators observe copyright laws and publishers' license agreements by developing sales and pricing policies. Software developers and vendors should as a minimum:

1. provide for all software a back-up copy to be used for archival purposes, to be included with every purchase.

2. provide for on-approval purchases to allow schools to preview the software to ensure that it meets the needs and expectations of the educational institution. Additionally, software developers are encouraged to provide regional or area centers with software for demonstration purposes. The ICEE encourages educators to develop regional centers for this purpose.

3. work in cooperation with hardware vendors to provide an encryption process which avoids inflexibility but discourages theft.

4. provide for, and note in advertisements, multiple-copy pricing for school sites with several machines and recognize that multiple copies do not necessarily call for multiple documentation.

5. provide for, and note in advertisements, network-compatible versions of software with pricing structures that recognize the extra costs of development to secure compatibility and recognize the buyer's need for only a single copy of the software.

The Board of Directors of the International Council for Computers in Education approved this policy statement, with attachments, June 5, 1983.

The committee that drafted this policy included:

Jenny Better, Director of Curriculum, Cupertino Union Elementary District
LeRoy Finkel, San Mateo County Office of Education
Pennie Gallant, Apple Computer, Inc.
John Hazelwood/Jeffrey Armstrong, Corvus Systems, Inc.
Marion B. Kenworthy, Saratoga High School
Richard R. Monnard, Addison-Wesley Publishing Co.
Henry Vigil/Cliff Godwin, Cybertronics International
William Wagner, Santa Clara County Office of Education

*International Council for Computers in Education

APPENDIX I
Selected Bibliography on Copyright Information

Association for Educational Communications and Technology (AECT) and the Association of Media Producers (AMP). Copyright and Educational Media: A Guide to Fair Use and Permissions Procedures. 1126 16th St., N.W., Washington, D.C. 20036. $2.95 (member); $3.95 (non-member).

This booklet is intended to provide some answers relating to fair use, library copying of audiovisual materials, and off-air copying of broadcast materials. It also suggests methods for requesting permission to copy from copyright holders.

Copyright Law Revision. Report No. 94-1476. Available from your Congressional representative.

This publication gives the background of the committee reactions to the various sections of the law; explains the committee's intent.

Copyright Revision Act of 1976. Commerce Clearing House, Inc. 4025 W. Peterson Ave., Chicago, IL 60646. $12.50.

This publication contains a copy and explanation of the law as well as the committee reports. This one book will provide a great deal of information and will save time needed to obtain the reports and the law itself.

Helm, Virginia. Software Quality and Copyright. Association for Educational Communications and Technology. 1126th 16th St., N.W., Washington, D.C. 20036. 1984. $16.

In addition to a thorough explanation of the copyright law as it relates to computer software, this publication includes a sample school district policy on computer software copyright.

Miller, Jerome K. The Copyright Directory. Copyright Information Service. 440 Tucker Rd., Friday Harbor, WA 98250. 1984. $18 for nonprofit libraries.

This publication is a compilation of sources to write to in order to secure copyright clearance for music, slides, video, motion pictures, sound effects, and still pictures. It also lists associations active in copyright matters.

_____. Using Copyrighted Videocassettes in Classrooms and Libraries. Copyright Information Services. 440 Tucker Rd., Friday Harbor, WA 98250. 1984. $15.

This publication deals with those sections of the Copyright Law which relate to the use of pre-recorded videocassettes, videodisks, and videotapes. Public library and school issues are discussed. Specific chapters cover warning and home-use labels.

Swanneck, Brenda. Helpful Hints on Securing Copyright Clearance. Wisconsin Educational Media Association (c/o Don Jorgensen). 1010 Huron St., Manitowoc, WI 54220.

Television Licensing Center. 1444 Wilmette Ave., Wilmette, IL 60091. (312) 256-4730.

This center was created to bridge the gap between producer and users to provide a single source of licenses for the extended use of videotapes of television programs. TLC pays a royalty to the producer and avoids the necessity on the part of the educators to individually negotiate different license fees.

Title 17: Copyright. Public Law 94-553. 90 STAT. 2541. Available from your Congressional representative.